

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2786 OF 1984

WITH

SPECIAL CIVIL APPLICATION No 6644 of 1985

For Approval and Signature:

Hon'ble MR. JUSTICE KUNDAN SINGH.

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
2. To be referred to the Reporter or not? Yes. t
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eporter or not? Yes.
3. Whether Their Lordships wish to see the fair copy of the judgement? -
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -
5. Whether it is to be circulated to the Civil Judge?
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D.V. PATEL

Versus

STATE OF GUJARAT

Appearance:

MRS K.A. MEHTA for Petitioner

MS HANSA PUNANI, A.G.P. Respondents.

CORAM : MR. JUSTICE KUNDAN SINGH.

Date of decision: 08/03/99

ORAL COMMON JUDGEMENT

These two petitions are connected with each other and both the petitions are filed by the same petitioner. Hence, both these petitions are disposed of by this common judgment.

2. First petition is for quashing the impugned order dated 16-5-1984 Annexure - I whereby the petitioner's resignation was accepted with effect from 12-10-1981 and the second petition has been filed for a direction to the respondents to regularize the petitioner's interruption in duty for the period from 13-10-1981 to 26-1-1982 and to fix the pay of the petitioner with effect from 27-1-1982.

3. The petitioner was appointed as an Assistant Engineering superintendent in the department of Technical Education on 12-2-1971 and he was promoted as a Principal of Weir Industrial Institute, Dharampur by the order dated 2-4-1981. The petitioner submitted his resignation to the Director of Technical Education by his letter dated 12-9-81. He was relieved by the Director of Technical Education by the order dated 12-10-1981. On 16-12-1981 the petitioner sent an application to withdraw his resignation and requested for resuming the duty on the ground that his resignation was not accepted till then and before acceptance of the resignation he withdrew his resignation and he should be allowed to resume his duty. By the letter dated 21-1-1982, the petitioner was directed to work as an Officiating Principal of the Industrial Institute, Amreli. Pursuant to that order the petitioner joined his service on 27-1-1982. By the order dated 17-12-83 the petitioner was relieved as per the direction of the Government. By the order dated 28-12-1983 the order dated 17-12-1983 of the Government was kept in abeyance. Later on the Government passed the order dated 16-5-1984 whereby the resignation of the petitioner was accepted with effect from 12-10-1981. That order has been challenged in this petition being Spl. Civil Application No. 2786/84.

4. This Court passed the interim order dated 25-5-1984 in terms of the relief claimed in para 10 (d)

of the petition wherein the petitioner sought interim injunction restraining the respondents, their servants and subordinate etc. from implementing or enforcing the order dated 16-5-1984 and from interfering in the performance of his official duties of Principal, Weir Industrial Institute, Dharampur.

5. Heard learned counsel for the parties and perused the relevant papers.

6. Learned counsel for the petitioner submitted that the petitioner submitted his resignation on 12-9-1981 to the Director of Technical Education and he withdrew his resignation by his letter dated 16-12-1981 and requested to permit him to resume his duty. The Government passed the impugned order dated 16-5-1984 accepting the resignation of the petitioner with effect from 7-10-1981. Thus, the petitioner withdrew his resignation prior to acceptance of the resignation of the petitioner by the appropriate authority. As such, the impugned order dated 16-5-1984 cannot be enforced and implemented. Learned counsel for the petitioner relied on the decision of the Division Bench of this Court in the case of Prithvirajsingh Vs. State of Gujarat and Anr., reported in 1998 (3) GLR 1983. I have given my anxious thought to the submissions made on behalf of the parties.

7. Now, two questions arise for consideration.

(i) Whether the Government servant is entitled to withdraw his resignation before the resignation is accepted by the appropriate authority ?

(ii) Whether the resignation will be deemed to have been accepted after expiry of the date of notice?

8. Rule 33 (A) of the Bombay Civil Service Rules, 1959 deals with the controversy in question, which reads as under :

33-A (1) (a) A Government servant may at any time resign from the services of the State by giving a notice of one month in writing to the appointing authority.

Provided that in the case of a temporary servant who has put in service of less than one year, the period of such notice shall be one week.

(b) Nothing in this rule shall affect the provisions of any special contract of service of bond entered into by the Government servant with the Government, or the provisions of any special rules, if any, applicable to him, in respect of the period of notice to be given for resignation from service or payment of any sum by the Government for premature resignation by him.

(2) The resignation tendered by a Government servant shall be effective from the date on which it is accepted by the appointing authority; but if it is not accepted before the expiry of the period of notice for resignation to be given by such servant under sub-rule (1) it shall be deemed to have become effect on the date of expiry of such period, unless the Government servant is informed before such date, that his resignation has been rejected and of the reasons for such rejection:

Provided that the resignation of a Government shall not be rejected except in case where-

(a) any ascertained or ascertained amount of money is found outstanding against him and payment thereof is not made by him within the period mentioned above;

(b) he is under suspension;

(c) any departmental enquiry or criminal prosecution is contemplated or pending against him.

(3) A Government servant shall not be relieved from his office, if his resignation is rejected.

(4) Where a Government servant remains absent from duty before his resignation has become effective or if his resignation has been rejected without prior grant of leave for such absence, it shall be lawful for the competent authority to treat his absence as leave without pay and to take disciplinary action against him for unauthorized absence from duty.

(5) any notice of resignation from service shall not be permitted to be withdrawn after the

resignation has become effective except on exceptional ground or in public interest.

9. Sub Rule (1) deals with the resignation given by a Government by giving notice of one month in writing to the appropriate authority. By Sub-rule (2) it is laid down that the resignation tendered by a Government servant shall be effective from the date on which it is accepted by the appointing authority, but if it is not accepted before the expiry of the period of notice for resignation to be given by such servant under sub-rule (1) it shall be deemed to have become effective on the date of expiry of such period, unless the Government servant is informed before such date that his resignation has been rejected. Sub-Rule (5) says that any notice of resignation from service shall not be permitted to be withdrawn after the resignation has become effective, except on exceptional ground or in public interest. In the present case, the petitioner tendered his resignation by his letter dated 12-9-1981 and he withdrew his resignation by the letter dated 16-12-1981 and requested for resuming his duty and his request was accepted and he was posted as an Officiating Principal by the order dated 21-1-1982 and he joined service pursuant to that order on 27-1-1982. By the notification dated 21-1-1982 I/c. Director of Technical Education passed the order in exercise of powers conferred by the resolution No. D/LJ/1064/3778/5 dated 4-1-1965 passed by the GAD as D.V. Patel working as Principal, Industrial Estate, Dharampur in the category of Gujarat Education Service, Class-II having withdrawn his resignation from the Government service and Shri Patel is reinstated in the same cadre in a vacant post of Shri K.K. Parikh of Technical Institute, Amreli having been promoted on purely temporary basis. Shri Patel's reinstatement was subject to approval of and in view of acceptance by the Government. It is not an ordinary case wherein the petitioner after tendering his resignation has not turned up to resume his duty. But in the present case, he made an application withdrawing his resignation before acceptance of the resignation of the petitioner and the petitioner resumed his duty and he worked from 27-1-1982 till 16-5-1982 and in pursuance of the interim order of this Court the petitioner is still in service. Similar question was raised before the Division Bench of this Court in the case Prithvirajsingh Vs. State of Guajrat and Anr. supra, wherein this Court has observed as under :

"The appellant submitted the resignation and the Government did not pass any order accepting that

resignation within reasonable time. The question is, whether the deeming provision under Sec.33 (2) had any operative effect. Section 33 - A(2) is to the following effect :

The resignation tendered by a Government servant shall be effective from the date on which it is accepted by the appointing authority; but if it is not accepted before the expiry of the period of notice for resignation to be given by such servant under sub-rule (1) it shall be deemed to have become effect on the date of expiry of such period, unless the Government servant is informed before such date, that his resignation has been rejected and of the reasons for such rejection:

It is true that the Government did not issue any order rejecting the resignation within one month. Under such circumstances, the resignation submitted by the employee could be deemed to have become effective. But that is only a deeming provisions and the authorities are well within their power to take a contrary view and that is what has been done in this case. By order dated 10th October, 1985, the superior officer of the appellant was informed that the request of the appellant to withdraw his resignation was accepted by the Government. There seems to have been some Government proceedings by which the letter of request of the appellant to withdraw the resignation was accepted. But these proceedings are not placed before us. However, the statement made in the order dated 10th October, 1985 is not disputed before us. Pursuant to the letter dated 10th October, 1985, the Superintending Engineer also passed a consequential order and therein also, it was stated that the period between 29-4-1985 to July 1985 will be treated as unauthorized absence and action will be taken as per Rule. The conduct of the parties lead us to believe that the resignation was not accepted by the Government. The impugned order is to be appreciated in the background of these circumstances. The appellant was allowed to join duty and he was informed on 10-10-1985 that his request for withdrawal of the resignation was accepted and he continued in service till the impugned order. In the facts and circumstances of the case, we are inclined to accept the

contention of the appellant that the resignation tendered by the appellant was permitted to be withdrawn and the deeming provision under Rule 33A(2) could not become effective. The learned single Judge was not justified in taking the view that the resignation had become effective and therefore, the appellant was not entitled to continue in service."

10. So far as the deeming clause in Sub-Rule (2) is concerned, this court has held that the deeming provision of Rule 33A (2) could not become effective as the withdrawal of resignation was accepted and he was permitted to work and as such, in the similar manner the petitioner is entitled to continue in service as the impugned order dated 16-5-1984 is illegal and is inoperative.

11. In view of the provision of Sub-Rule (5) the Government servant is not allowed to withdraw his resignation after his resignation has been accepted. In the present case, the resignation of the petitioner was accepted by the order dated 16-5-1984 till then the petitioner was entitled to withdraw his resignation as the petitioner was allowed to withdraw his resignation and permitted to work and the deeming clause would not be attracted and the impugned order will not be operative in view of the facts and circumstances of the case, as stated above. As such, the impugned order dated 16-5-1984 is liable to be quashed and set aside.

12. So far as second petition being Special Civil Application No.6644 of 1985 is concerned in which the petitioner has prayed for a direction to the respondents to regularize the petitioner's interruption in duty for the period from 13-10-1981 to 26-1-1982, this prayer cannot be allowed inasmuch as Sub-Rule 4 provides that where a Government servant remains absent from duty before his resignation has become effective or if his resignation has been rejected without prior grant of leave for such absence, it shall be lawful for the competent authority to treat his absence as leave without pay and to take disciplinary action against him for unauthorized absence from duty. In the present case, the petitioner tendered his resignation on 12-9-1981 and in view of his resignation the petitioner was relieved on 12-10-1981 by the Director of Technical Education and he resumed his duty on 27-1-1982 pursuant to the order dated 21-1-1982. Thus, the petitioner remained absent from 12-10-1981 to 27-1-82 though he was relieved by the Director of Technical Education. But he remained absent

from the duty for that period the Department is entitled to take disciplinary action against the petitioner under Sub-Rule 4 of Rule 33A of the aforesaid Rules. The department concerned is at liberty to treat his absence as leave without pay or to take disciplinary action against him for unauthorized absence from duty. This Court cannot pass an order to regularize this period as on duty.

13. So far as second prayer for a direction to the respondents to fix pay of the petitioner as on 27-1-1982 is concerned, as the order dated 16-5-1984 has been declared as null and void by this Court, the petitioner is entitled for this relief and the respondents are directed to refix the pay scale of the petitioner from 27-1-1982 onward.

14. Accordingly, Special Civil Application No. 2786/84 is allowed and the impugned order dated 16-5-1984 is hereby quashed and set aside and Special Civil Application No. 6644/84 is allowed in part and the respondents are directed to refix the pay scale of the petitioners with effect from 27-1-1982 and to pay all consequential benefits within three months from the date of production of a certified copy of this order. Rule is made absolute in Spl. C.A. No. 2786/84 and rule is made absolute to the aforesaid extent in Spl. C.A. No. 6644/85, with no order as to costs. Interim order, if any, stands vacated.

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/JVSatwara/